FARAD CONSTITUTION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR
WRIT PETITION NO.4151/2005

Shamim Khan s/o Rahim Khan and others
...Versus...
Munaj Khan s/o Mehboob Khan Pathan and another

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

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(Shri P.A. Markandeywar, Adv. for petitioners)
(Shri K.R. Lambat, Adv. for respondents)

CORAM:- A.B. CHAUDHARI, J.
DATED :- 28.06.2007.

By the present writ petition, the petitioners have challenged the order dated 22.7.2005, below exh.101 in R.C.S. No.3641/2001 (Old Special Civil Suit No.718/1990), passed by the 8th Jt. Civil Judge (J.D.), Nagpur.

It appears that R.C.S. No.726/1986 was filed against the Nagpur Municipal Corporation and M.S.E.B. by the plaintiff therein for recovery of movable property that was seized for want of authorization for running flour mill. The plaintiff in that suit wanted to recover the movable properties i.e. machineries in Nagpur Municipal Corporation and M.S.E.B.. As against that in Civil Suit No.3641/2001, the plaintiff wanted to get premises vacated. The Trial Court has in its

impugned order made detailed discussion after hearing Counsel for the parties and found that the nature of two suits are different. The parties are also different and the main requirement of Section 10 of the Code of Civil Procedure is that the matter has to be substantially the same in both the suits. The Trial Court has dealt with the application in detail and has arrived at a conclusion that both suits being totally of different nature, there was no point in staying the suit as prayed for.

Having carefully considered the submissions made by Counsel for the parties, I am inclined to confirm the finding recorded by the Trial Court that there is no need to stay earlier suit and I also agree that the suit being of the year 1986 there is an attempt to prolong the progress of the suit. Be that as it may, this is not a case where interference in writ jurisdiction is called for. The Trial Court is directed to decide the suits as expeditiously as possible.

In the result, I do not find any substance in the present writ petition. The same is dismissed. No order as to costs.

JUDGE

SSW